IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Regular Second Appeal No. 1730 of 2004

Date of decision: 22.8.2006

Jagtar Singh --- Appellant

Versus

HUF Firm M/s. Charu Pesticide & Company
Malout District Muktsar through Sat Parkash
Kharbanda its Proprietor --- Respondent

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

PRESENT: Mr. A.K. Khungar, Advocate for the appellant.

Mr. Harsh Aggarwal, Advocate for the respondent.

JUDGMENT

This judgment shall dispose of Regular Second Appeal Nos. 1730 and 1921 of 2004 as the same arise out of two suits containing similar facts and the plaintiff is also common in both the suits. The facts have however been taken from RSA No. 1730 of 2004.

Plaintiff filed a suit for recovery 1,09,734/- i.e. Rs. 78,575/- on account of principal amount and Rs. 31,159/- on account of interest, on the basis of entries of account books and credit memos. It was averred that the defendant purchased pesticides on credit from the plaintiff from time to time. The defendant used to put signatures on credit memos after understanding the contents thereof. It was further averred that the defendant purchased pesticides on credit for an amount of Rs. 78,575/- which he did not pay despite demand. Interest at the rate of 2% per month was also claimed on the principal amount outstanding against the defendant.

Defendant contested the suit stating that the suit had been filed on false pleas. In fact the pesticides supplied by the plaintiff were of a very poor quality and besides it were adulterated and misbranded for which the

defendant had filed a suit for damages before the District Consumer Court, Muktsar and the present suit was a counterblast of the suit filed by the defendant. Defendant denied his dealings of business with the plaintiff and stated further that he never authorized any person of the name of Bhupinder Singh for the purchase of the pesticides from the plaintiff and in any case, if some pesticides were purchased, the same were purchased in cash.

Plaintiff produced the original record in court and copies of entries in the cash books Ex.P1/A to Ex. P22/A and copies of ledger Ex. P1/B to Ex. P22/B. Plaintiff while appearing as his own witness as PW-1 clarified on record by producing a copy of order dated 14.8.2000, Ex.P-26 that the complaint filed by the defendant regarding the alleged poor quality and adulteration was dismissed by the District Consumer Forum, Muktsar. It was further found by the trial court that on the other hand there was solitary and self-serving statement of the defendant who admitted his signatures on the credit memos. The contents of credit memos further agreed with the entries made in the account books. It was consequently held that the defendant had purchased pesticides from the plaintiff on credit and the plaintiff was entitled to recover the said amount along with interest. Suit was consequently decreed for the recovery of Rs. 1,09,734/- with costs and interest at the rate of 12% from the date of filing of the suit till realization.

Dissatisfied with the trial court judgment and decree, the defendant preferred appeal. The findings returned by the trial court were affirmed with the exception that the first appellate court reduced the amount payable on account of interest. The trial court had granted interest at the rate of 12% per annum from the date of filing of the suit till realization but the first appellate court ordered that the plaintiff will be entitled to interest at the rate of 12% per annum from 29.12.1998 till the date of trial court decree i.e. 22.8.2002 and from 23.8.2002 till realization, at the rate of 6% per annum. To this limited extent the trial court decree was modified by the first appellate court.

I have heard learned counsel for the parties and have perused the record. The findings recorded by both the courts below are concurrent findings of fact based on appreciation of evidence oral as well as documentary and do not call for interference by this Court in second appeal. No illegality or perversity could be pointed out by the learned counsel for the appellant in the said findings. Nothing was shown by the counsel for the appellant that there is mis-reading or mis-appreciation of evidence or any material evidence has been ignored from consideration or

the findings returned are palpably wrong and against law warranting interference in these regular second appeals. No question of law, much less a substantial question of law arises in these appeals for the consideration of this Court. The appeals are consequently dismissed.

(AJAY KUMAR MITTAL)
JUDGE

August 22, 2006
MALIK